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 UM CORPORATION

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

UM CORPORATION, a Japanese corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO. LTD., a Japanese corporation,

Defendant.

Case No.

COMPLAINT FOR COPYRIGHT
INFRINGEMENT, BREACH OF
CONTRACT, INTENTIONAL
INTERFERENCE WITH
CONTRACTUAL RELATIONS,
AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiff UM Corporation (“UMC”) by and through its attorneys, brings
 this action against Defendant Tsuburaya Productions Co., Ltd. (“TPC”)
 alleging as follows:

NATURE OF THE ACTION

1. This action concerns ownership of intellectual property rights in
 several Japanese motion pictures based on the superhero Ultraman. *See*
Figure 1. The action arises from Defendant TPC’s blatant disregard of a
 contract that unequivocally grants Plaintiff UMC an exclusive, perpetual
 license to all copyrights and trademarks in various Ultraman works in all

1 countries outside of Japan. TPC has refused to acknowledge this contract, and
2 instead continues to unjustly claim ownership of the works. TPC has not only
3 published UMC's licensed Ultraman works in the United States, but has also
4 created new Ultraman characters that are substantially similar to the original,
5 licensed Ultraman characters in appearance, coloring, and style. *See e.g.*
6 *Figures 1-2.*



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21 *Figure 1: Original Ultraman*



22 *Figure 2: TPC's Ultraman*

23 TPC's egregious violations of UMC's intellectual property rights offend the
24 most basic principles of United States copyright and contract law. Further, in
25 violation of California law, TPC has contacted and threatened UMC's clients
26 and licensees in the United States to prevent them from disseminating
27 ULTRAMAN works within this country. UMC now seeks damages for TPC's
28 sundry violations of United States law, plus this court's declaration that UMC

1 is the exclusive, perpetual licensee to the ULTRAMAN works within the
2 United States.

3 **THE PARTIES**

4 2. Plaintiff UM Corporation (“UMC”) is a Japanese corporation
5 with its principal place of business in Tokyo, Japan.

6 3. UMC, through its licensee TIGA Entertainment Company, Ltd.
7 (“TIGA”), a corporation incorporated under the laws of Hong Kong, with its
8 principal place of business in Hong Kong, currently has several licensing
9 agreements for the distribution of Ultraman works within the United States
10 with Golden Media Group (“GMG”), a California Corporation with its
11 principal place of business at 19553 Mesa of the Oaks Newhall, California
12 91321. GMG, in turn, has a distribution licensing agreement with Veranda
13 Entertainment LLC, a California limited liability company with its principal
14 place of business in Los Angeles, California.

15 4. Upon information and belief, TPC is a corporation incorporated
16 under the laws of Japan, with its principal place of business in Tokyo, Japan.
17 TPC is in the business of developing, producing, distributing, and selling
18 motion pictures. Upon information and belief, TPC is presently involved in
19 the exploitation of Ultraman works (that are the subject of this dispute) in the
20 United States.

21 **JURISDICTION AND VENUE**

22 5. This court has personal jurisdiction over TPC because, on
23 information and belief, TPC – through YouTube – has disseminated and
24 published motion pictures in California, targeted customers in this district, and
25 has reached out to businesses in this district to interfere with UMC’s business
26 relations, and such conduct has caused or is likely to cause injury to UMC in
27 this judicial district.
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6. This Court has subject-matter jurisdiction over the Copyright Act claims pursuant to 28 U.S.C. §§1331 and 1338. This Court has jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

7. Venue is proper in this district under 28 U.S.C. §§1391 and 1400. Plaintiff is informed and believe that Defendants – through their executives, employees, online and other business activities – transact business in this district, and a substantial part of the events giving rise to this litigation, including the injury to Plaintiff and its agents, occurred in this district.

FACTUAL BACKGROUND

UMC is the Exclusive Licensee to ULTRAMAN in the United States

8. “Ultraman” is an enormously popular Japanese superhero. The first “Ultraman” television series, called “Ultra Q,” aired in Japan in 1966. “Ultra Q” was created and developed by Defendant TPC. Over the next ten years, TPC created several motion picture series based on “Ultraman” and its central characters.

9. On March 4, 1976, President Noboru Tsuburaya of TPC executed an agreement whereby he granted to Mr. Sompote Saengduenchai (“Mr. Sompote”), President of Chaiyo Film Co., Ltd., an exclusive and perpetual license to “Ultra Q” all then-existing works based on the “Ultraman” character, including:

- GIANT VS. JAMBO ‘A’
- HARUMAN AND THE SEVEN ULTRAMAN
- ULTRAMAN 1 “ULTRA Q” (28 x 30 min) (“**Ultra Q**”)
- ULTRAMAN 2 (39 x 30 min) (“**Ultraman**”)

- ULTRAMAN SEVEN (50 x 30 min) (“**Ultra Seven**”)
- RETURN ULTRAMAN (51 x 30 min)
- ULTRAMAN ACE (51 x 30 min)
- ULTRAMAN TARO (54 x 30 min) (“**Ultraman Taro**”)
- JAMBORG ACE (50 x 30 min)¹

(hereafter collectively referred to as the “ULTRAMAN works.”)

10. The 1976 Licensing Agreement (hereafter referred to as the “1976 Agreement”) granted to Mr. Sompote “exclusive rights [in the ULTRAMAN works] to all territories except Japan for indefinite period from the date of production of the first negative print.” Under the 1976 Agreement, the licensed rights in the ULTRAMAN works include rights in both “copyright” and “trademark.”

11. In 2007, Mr. Sompote transferred all of his rights in the 1976 Agreement to Mr. Perasit Saengduenchai (“Mr. Perasit”). Mr. Perasit then transferred all rights in the 1976 Agreement to Plaintiff UMC.

12. On December 24, 2008, Mr. Sompote confirmed in writing that all conveyed to him by the 1976 Agreement were validly transferred to UMC.

13. Thus, under the 1976 Agreement, UMC is the exclusive holder of all rights granted under the 1976 Agreement. This includes the indefinite right to exploit the copyrights in the ULTRAMAN works, and all attendant exclusive rights in copyright, in every country except for Japan.

UMC’s Copyrights in the Ultraman Works and Plans for Distribution

14. UMC is in the business of licensing the ULTRAMAN works. UMC has clients and/or licensees to the ULTRAMAN works to companies in various countries around the world including China, Hong Kong, Taiwan,

¹ The parentheticals next to the titles are number of episodes and length of episodes. Thus, for example, ULTRAMAN 2 has 39 episodes that are each 30 minutes long.

1 Malaysia, and relevant here, the United States. Further, UMC has expended
2 money and resources in developing its own derivative Ultraman characters and
3 plans to create a new Ultraman brand based on the ULTRAMAN works.

4 15. On May 15, 2015, Plaintiff submitted expedited applications to
5 register four of the ULTRAMAN works with the United States Copyright
6 Office. The copyright applications are for the following works: (1) Ultra Q,
7 (2) Ultraman, (3) Ultra Seven, and (4) Ultraman Taro.

8 16. UMC is currently in the pre-production stages to develop an
9 adapted Ultraman movie, based on the ULTRAMAN works. The movie will
10 be broadcast in China first and then other Asian countries except Japan, and
11 then in the United States.

12 17. In 2011, UMC granted TIGA an exclusive license for the
13 exploitation of the ULTRAMAN works. The licensing agreement was
14 executed so that TIGA could enter into subsequent sublicensing agreements
15 with other companies to exploit the ULTRAMAN works in countries
16 throughout the world, except Japan.

17 18. UMC, through TIGA, has licensed several of the ULTRAMAN
18 works to Golden Media Group (“GMG”), a California corporation. GMG is a
19 company in the business of distributing and managing DVD libraries for
20 various high profile clients, and is located in Newhall, California. On
21 December 20, 2011, TIGA and GMG entered into a four-year licensing
22 agreement for **Ultraman** in the United States and English Speaking Canada.
23 The license period is from January 1, 2012 through December 31, 2016. On
24 February 12, 2012, TIGA and GMG entered into a five-year licensing
25 agreement for the home video rights and digital rights in the **Ultra Seven** and
26 **Ultra Q** series in the United States and English Speaking Canada. The license
27 period is for 5 years from the initial release date of the films. On August 1,
28

1 2014, TIGA and GMG entered into a licensing agreement for the home video
2 rights and digital rights in the **Ultraman Taro** films for the United States and
3 English Speaking Canada. The license period is from September 1, 2014
4 through August 31, 2019. Each work licensed to GMG was granted to Mr.
5 Sompote, and thereafter to UMC, by the 1976 Agreement.

6 19. In or around July 10, 2014, GMG entered into a licensing
7 agreement with Randall Green, dba Green Cloud Media, for the online
8 distribution of three of the ULTRAMAN works: Ultraman, UltraSeven, and
9 Ultra Q.

10 20. In or around August 10, 2014, Randall Green (“Mr. Green”)
11 assigned his interest in the licensing agreement with GMG to Veranda
12 Entertainment, LLC (“Veranda”), a company which he co-founded.

13 **TPC’s Interference with and Infringement on UMC’s Copyrights**

14 21. Around October of 2014, Veranda began to upload episodes of
15 ULTRAMAN works to YouTube, pursuant to the license agreement with
16 GMG. Veranda was soon thereafter notified via YouTube’s “Content ID”
17 system that the content it was uploading overlapped with (aka was identical to)
18 other works on YouTube.

22. YouTube's Content ID system monitors videos uploaded to YouTube and scans them against a database of files that have been submitted to YouTube by other content owners. When content in a video on YouTube matches a work previously uploaded to YouTube, the parties who posted the videos are notified of a conflict in ownership. Thus, for example, when Veranda uploaded "Ultraman: The Ride Stone of Baradhi, Ep07," a video to which UMC has exclusive licensing rights in the United States, YouTube's Content ID system discovered an overlap of 21:52 minutes out of 25:16 minutes with a video uploaded by TPC entitled "New Retsuden#028 minogasi YouTube." *See Figure 3.*

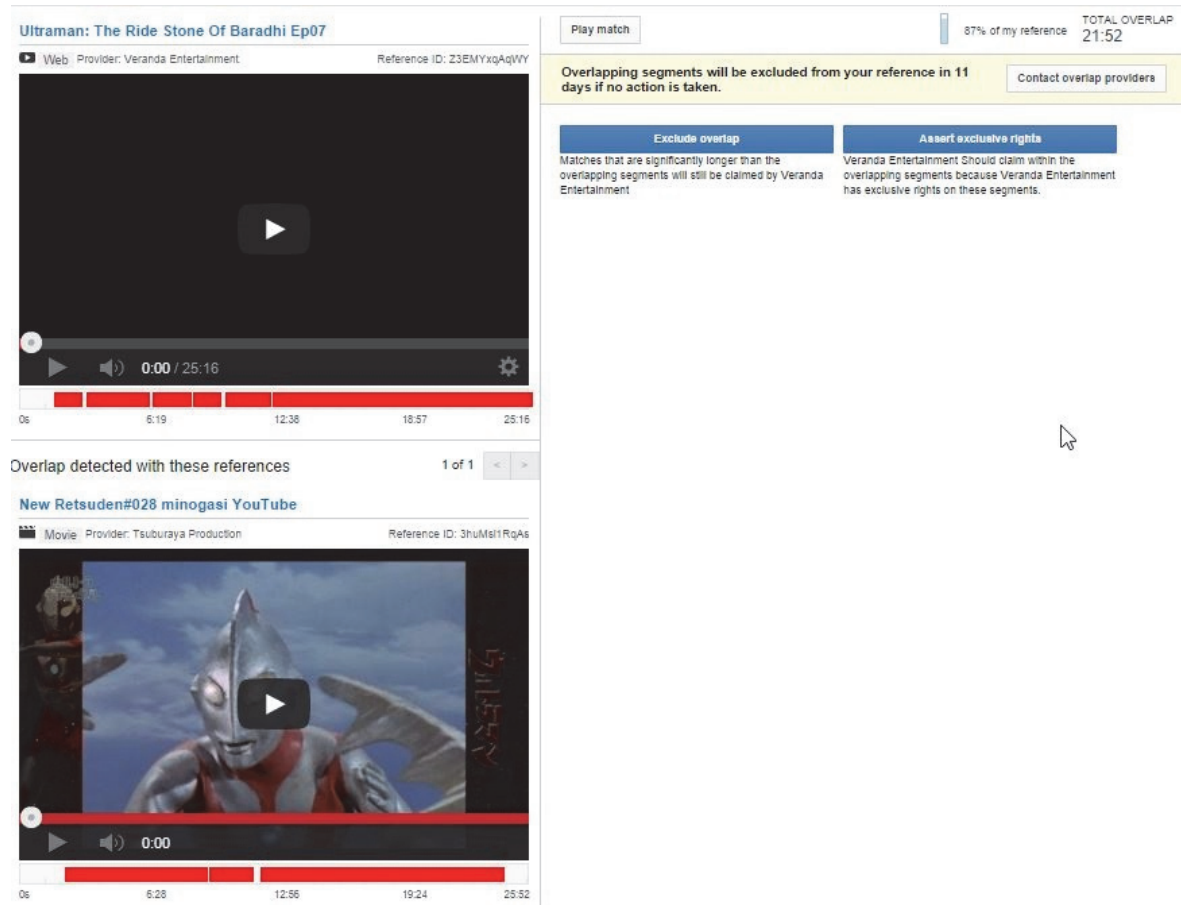


Figure 3

1 23. YouTube's Content ID system also reports the exact percentage
2 of overlap between the videos, meaning that if Veranda uploaded a one-hour
3 video and another YouTube user uploaded a video that contained 30 minutes
4 of the same footage, there would be 50% overlap.

5 24. YouTube reported to Veranda that TPC had published 114 videos
6 on YouTube that overlapped with the ULTRAMAN works. The reports reveal
7 that some of the videos uploaded by TPC overlapped with the ULTRAMAN
8 works uploaded by Veranda by as much as 99%, indicating that TPC is
9 illegally airing entire episodes of the ULTRAMAN works.

10 25. In direct contravention of the clear chain of title to exploit the
11 ULTRAMAN works, on September 13, 2014, Kei Minamitani ("Mr.
12 Minamitani"), an agent or employee of TPC, emailed Mr. Green writing:
13 "Tsuburaya Productions are the sole copyright owner of the TV series ULTRA
14 Q, and we have the rights to utilize the series all of the world."

15 26. On October 10, 2014, Mr. Minamitani again emailed Mr. Green,
16 asserting that "without Tsuburaya Productions' prior approval, [Veranda] has
17 no legal authority to claim the rights for the Ultraman series." The letter went
18 on to read: "For the above reasons, exercising any rights to utilize the
19 Ultraman Series shall constitute copyright infringement, and Tsuburaya
20 Productions strongly demands that your company immediately terminate the
21 exercise of such rights for the Ultraman Series."

22 27. On October 22, 2014, Mr. Shinichi Ooka ("Mr. Ooka"), a
23 representative director TPC, sent Mr. Green a formal letter reiterating the
24 sentiments of Mr. Minamitani, writing that Veranda (and UMC) has no legal
25 authority to exploit the Ultraman works. Mr. Ooka further wrote: "exercising
26 any rights to utilize the Ultraman Series shall constitute copyright
27 infringement, and Tsuburaya Productions strongly demands that your
28

1 company immediately terminate the exercise of such rights for the Ultraman
2 series.”

3 28. UMC has since learned that in clear violation of the 1976
4 Agreement, TPC presently claims ownership to all of the ULTRAMAN works
5 it has uploaded to YouTube in 256 countries worldwide.

6 29. In response to TPC’s fusillade of threats, Veranda immediately
7 took down the ULTRAMAN works from YouTube and discontinued
8 exploitation of all digital rights in the ULTRAMAN. Veranda felt it could no
9 longer exploit the ULTRAMAN works as it was subject to potential litigation,
10 damages and loss of potential revenue. Veranda expressed that unless TPC
11 withdrew its claims of copyright ownership, Veranda, its representatives,
12 distributors and others could suffer loss of revenue, legal expenses, and other
13 damages. Further, Veranda informed UMC and TIGA that it would have to
14 inform its other agents and licensees of TPC’s threats if the situation was not
15 worked out.

16 30. In addition, in early 2015, TIGA had contracted for
17 Veranda/GMG to release the **Ultraman Taro** motion pictures on DVD in the
18 United States. However, after receiving TPC’s threats, Veranda has stopped
19 all plans to distribute **Ultraman Taro** and has refused to pay the licensing fees
20 due under the contract until UMC’s issues with TPC are resolved.

21 31. UMC has also developed contracts with producers and
22 merchandising licensees in the United States, but is concerned that TPC’s
23 meritless claims of copyright ownership will deter these potential clients and
24 businesses from working with UMC.

25 32. UMC has also recently learned that TPC has plans to expand its
26 distribution of the ULTRAMAN works outside of Japan, in direct violation of
27 UMC’s rights under the 1976 Agreement.

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FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 501 *et seq.*

33. Plaintiff realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 32 of this Complaint.

34. Plaintiff has submitted expedited applications to register four of the ULTRAMAN works with the United States Copyright Office: (1) Ultra Q, (2) Ultraman, (3) Ultra Seven, and (4) Ultraman Taro (copyright applications filed and pending).

35. Plaintiff is the exclusive licensee in and to the Ultraman works, and Plaintiff's copyrights in these works are valid and original.

36. Defendants had access to the ULTRAMAN works and copied the exact works by posting full or portions of the works on YouTube. Further, Plaintiff copied original elements from the ULTRAMAN works to create their new "Ultraman" character. As illustrated above, the original ULTRAMAN works and Defendants' Ultraman are substantially similar in appearance and expression.

37. Defendants' aforementioned conduct infringes and will continue to infringe the exclusive rights belonging to Plaintiff as owner of the copyrights.

38. At no time has Plaintiff authorized Defendant to distribute, copy, reproduce, adapt, distribute, or utilize in any way its copyrighted works.

39. As a direct and proximate result of its wrongful conduct, Plaintiff is informed and believes and based thereon, alleges, that it has suffered and will continue to suffer injury and damages in an amount to be determined at trial, and that Defendants have realized and continue to realize profits and other benefits rightfully belonging to Plaintiff which should be disgorged to

1 Plaintiff. Accordingly, Plaintiff seeks an award of damages, amount to be
2 determined at trial, pursuant to 17 U.S.C. §§ 504 and 505. Alternatively,
3 Plaintiff reserves the right to seek statutory damages for Defendants'
4 intentional infringement of its copyrighted works.

5 40. Upon information and belief, Defendants have willfully engaged
6 in, and are willfully engaging in, the acts complained of with oppression,
7 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff
8 is, therefore, entitled to the maximum statutory damages allowable.

9 41. Defendants' infringing conduct has also caused and is causing
10 substantial and irreparable injury and damage to Plaintiff in an amount not
11 capable of determination, and, unless restrained, pursuant to 17 U.S.C. § 502
12 will cause further irreparable injury, leaving the Plaintiff with no adequate
13 remedy at law.

14 **SECOND CAUSE OF ACTION**
15 **BREACH OF CONTRACT**

16 42. Plaintiff realleges and incorporates herein by reference the
17 matters alleged in Paragraphs 1 through 41 of this Complaint.

18 43. Plaintiff, its predecessors, and assigns, have fully performed all
19 obligations and conditions required of it pursuant to the terms of the 1976
20 Agreement, except as said performance has been waived, excused or
21 prevented by Defendant, its predecessors, and/or assigns.

22 44. Defendant is in material default of its obligations under the 1976
23 Agreement and has breached the 1976 Agreement in numerous respects
24 including, but not limited to, the following:

- 25 • TPC has exploited the ULTRAMAN works outside of Japan
26 in direct contravention of the 1976 Agreement which states
27 that UMC, through its assigns and predecessors, has acquired
28

1 the *exclusive* license to exploit the ULTRAMAN works in all
2 territories except Japan.

- 3 • TPC has adapted the ULTRAMAN works and has concrete
4 plans for world-wide distribution.
- 5 • TPC has made it clear to UMC and its assigns that it does not
6 recognize TPC's rights in the ULTRAMAN works. Thus,
7 TPC has made it clear that it does not intend to live up to its
8 obligations under the 1976 Agreement.
- 9 • TPC has reached out to Veranda and stated that it is the sole
10 owner of the Ultraman series.

11 45. As a consequence of the several wrongful acts and omissions and
12 defaults alleged above, and others, Defendant is in default of its material
13 obligations under the 1976 Agreement and has breached the 1976 Agreement,
14 including the covenant of good faith and fair dealing.

15 46. As a direct and proximate result of Defendant's breach of the
16 1976 Agreement, including the breach of the covenant of good faith and fair
17 dealing and failure to abide by the terms of the contract, Plaintiff has been
18 damaged in an amount to be determined at trial.

19 **THIRD CAUSE OF ACTION**
20 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL**
21 **RELATIONS**

22 47. Plaintiff realleges and incorporates herein by reference the
23 matters alleged in Paragraphs 1 through 46 of this Complaint.

24 48. In the course of its business, UMC has existing and enforceable
25 contractual relationships with third-party film distributors and licensees,
26 including but not limited to TIGA, GMG and Veranda.

1 49. TPC is well aware of UMC's contractual relationships, including
2 the relationships between UMC, TIGA, Veranda and GMG.

3 50. TPC's aforementioned intentional acts, namely the dissemination
4 of threatening letters, false statements regarding its rights to the ULTRAMAN
5 works, and demands that UMC's licensees cease exercising their rights to the
6 ULTRAMAN works, were designed to and did induce a disruption of one or
7 more of TPC's contractual relationships, including but not limited to UMC's
8 contract with TIGA, whose licensee Veranda removed the ULTRAMAN
9 works from YouTube pending resolution of this dispute.

10 51. As a direct and proximate result of TPC's conduct, UMC has
11 suffered irreparable harm to its business, goodwill and reputation, including
12 monetary damages the amount of which will be proven at trial. Unless T PC is
13 restrained from such conduct, UMC will continue to be irreparably harmed.

14 52. The acts of TPC as described above were and are willful, wanton,
15 malicious and oppressive, and justify an award of punitive damages.

16 **FOURTH CAUSE OF ACTION**

17 **DECLARATORY RELIEF**

18 **(28 U.S.C. § 2201)**

19 53. Plaintiff realleges and incorporates herein by reference the
20 matters alleged in Paragraphs 1 through 52 of this Complaint.

21 54. An actual controversy exists as to whether Plaintiff is the
22 exclusive licensee of the ULTRAMAN works and whether Plaintiff has the
23 right to access and use the ULTRAMAN works pursuant to the grant of rights
24 contained in the 1976 Agreement.

25 55. Plaintiff has demanded that Defendant acknowledge that Plaintiff
26 is the exclusive licensee of the ULTRAMAN works pursuant to the 1976
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1 Agreement. However, Defendant has failed and refused to comply with
2 Plaintiff's demand.

3 56. Plaintiff is entitled to a declaratory judgment that Plaintiff is the
4 exclusive licensee of the ULTRAMAN works pursuant to the grant of rights
5 under the 1976 Agreement in the United States.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief as follows:

- 8 1. Entry of an order and judgment requiring that Defendant and its
9 agents, employees, and representatives, and all other persons,
10 firms or corporations in active concert or participation with
11 Defendant, be enjoined and restrained from: (a) using Plaintiff's
12 copyrighted works, and all other ULTRAMAN works
13 enumerated in the 1976 Agreement, including but not limited to
14 reproducing, adapting, distributing, displaying, manufacturing,
15 selling, promoting, advertising, offering for sale, adapting,
16 broadcasting, or otherwise placing into the market any of the
17 ULTRAMAN works or any other substantially similar work in
18 the United States that infringes Plaintiff's registered copyrights in
19 the ULTRAMAN works or infringes on any other rights
20 conveyed by the 1976 agreement; and (b) doing any act or thing
21 calculated or likely to cause confusion or mistake in the minds of
22 members of the public, or prospective licensees of Plaintiff, as to
23 who has the right to exploit the ULTRAMAN works in the
24 United States;
- 25 2. A judgment ordering Defendant, pursuant to 15 U.S.C. § 1116(a),
26 to file with this Court and serve upon Plaintiff within thirty (30)
27 days after entry of the injunction, a report in writing under oath
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1 setting forth in detail the manner and form in which Defendant
2 has complied with the injunction as set forth above;

3 3. Plaintiff's damages sustained by reason of the acts complained of
4 herein, in an amount to be proven at trial;

5 4. A judgment ordering Defendant to account to Plaintiff any and all
6 revenues and profits that they have derived from their wrongful
7 actions, and a disgorgement of Defendant's wrongful profits and
8 unjust enrichment;

9 5. In connection with Plaintiff's copyright claims, the right to
10 collect enhanced and statutory damages;

11 6. In connection with Plaintiff's request for declaratory judgment,
12 that Plaintiff be declared to be the exclusive licensee of all of the
13 rights in the ULTRAMAN works in the United States pursuant to
14 the 1976 Agreement;

15 7. In connection with its intentional interference with contractual
16 relations claims, an award of punitive damages sufficient to deter
17 Defendant's conduct;

18 8. A judgment awarding Plaintiff the reasonable attorneys' fees and
19 costs of suit, prejudgment interest; and

20 9. A judgment granting Plaintiff such other and further relief as the
21 Court deems just and proper.
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1 Dated: May 18, 2015.

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